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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/771,536      | 02/05/2004  | Jacques Duchamp      | 07552.0023          | 4262             |

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|                   |
|-------------------|
| EXAMINER          |
| MENON, KRISHNAN S |

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
| 1723     |              |

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/771,536

Applicant(s)

DUCHAMP ET AL.

Examiner

Krishnan S. Menon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-38 is/are pending in the application.
- 4a) Of the above claim(s) 21-34, 36 and 37 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38 is/are allowed.
- 6) ☒ Claim(s) 1-20 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Claims 1, 4-38 are pending as amended 9/7/06, of which 21-34,36 and 37 are withdrawn from consideration.

### ***Terminal Disclaimer***

The terminal disclaimer filed on 9/7/06 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent(s) granted on application numbers 10/771,415 and 10/775,993 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-6,12 and14-17, are rejected under 35 U.S.C. 102(b) as being anticipated by Vinci, WO 01/08722 (US 6,630,068 is equivalent and is used in the rejection).

Claims 1,2,4,5,12: Vinci teaches a support element having a base body and four connectors directly constrained to the body as claimed – see the figures, abstract and column 2 lines 50-56. The connectors have differentiated interaxes for engaging with counter-connectors of treatment devices. Regarding the single piece with the body: the reference teaches the connectors as being attached to the body to form a single piece

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(connectors and the body form one unit, or are constrained to the base body, as disclosed by the applicant in the specification (paragraph 32 of the PG PUB, for example) and drawings) with the body. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re American Academy of Science Tech Center, \*\*>367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004)< (The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation.). The reference anticipates the claims unless applicant recites specific structural details that forms the 'single piece'.

Claim 6: connectors afford fluid passage between the blood treatment device and fluid distribution circuitry – see figures.

Claim 14: rigid material is implied: it provides mechanical support to the filter – see figures.

Claim 15, 16: connectors are aligned in a line on one side – see figure 2.

Claim 17: the support is part of the wall of the machine – see 4, figure 2. The machine accommodates the fluid distribution circuitry as claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7-11, 13 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinci as applied to claim 1 or 6 above, and further in view of GB 2 067 075.

Independent claim 35 recites the limitations of claims 1 and 7. Instant claims differ from the teaching of Vinci in the details of the connector, ie., the sealing collar, the connecting wall and the annular seating (annular seating is the conical space between the sealing collar and the sealing wall). However, such details are similar to a "luer connector" as taught by the GB reference, and is known in the art and commonly used. It would be obvious to one of ordinary skill in the art at the time of invention to have the luer connector for the connectors of Vinci because luer connectors provide protection from contamination through contact by hand. The details recited in the claim correspond to the complementary external and internal cones as described in the reference.

3. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinci as applied to claim 1, 4 or 17, and further in view of EP 0 611 227.

Instant claims differ from the teaching of Vinci in the details of the works area, perimeter wall, connectors emerging from the perimeter wall, connectors are not aligned, and the perimeter wall cover. EP teaches the perimeter wall, the circuitry etc attached to the perimeter wall and the back side of the frontal wall, and the cover (see figures 1-7. The treatment module could be assembled to the perimeter wall as shown in figure 7, which would be an alternate, but equivalent arrangement, in which the

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connectors would be on the perimeter wall, and would not be in a line. It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of EP in the teaching of Vinci to have the treatment device enclosed as shown in EP for easy packaging, etc as taught by EP (column 9 lines 5-21).

### ***Response to Arguments***

Applicant's arguments filed 9/7/06 have been fully considered but they are not persuasive with respect to the rejected claims. Argument about the connectors forming a 'single piece' with the base body is addressed in the rejection. Moreover, making integral (one piece) or separable (two-part) would be a matter of obvious engineering choice (*In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 CCPA 1965); *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348,349 (CCPA 1961)).

Arguments with respect to the 103 rejections are also not persuasive, because the basis is again the 'single piece' argument.

### ***Allowable Subject Matter***

Claim 38 is allowed.

The following is a statement of reasons for the indication of allowable subject matter: the claim recites structural details of the connectors which are not taught by the references, as explained by the applicant in the remarks.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S. Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'KS Menon', followed by the date '9/20/06' written in a similar cursive style.

Krishnan S Menon  
Examiner  
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